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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,129	06/24/2003	Scot R. Shepard	D 2001.689 US D1	1596

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MILLSBORO, DE 19966-0318

EXAMINER

WILLIAMS, LEONARD M

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/602,129	Applicant(s) SHEPARD, SCOT R.	
	Examiner Leonard M. Williams	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 10-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-16 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/24/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

*AS*

Detailed Action

***Priority***

This application is a divisional of application number 09/855634 now US Patent 6635679.

***Claim Objections***

Claim 14 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 14 states the same limitation as that of claim 13 and thus is redundant and not further limiting.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Michaels (US Patent No. 5389676).

Michaels teaches, in col. 2 lines 20-45 and col. 3 line 5 to col. 4 line 45, compositions comprising surfactants including amine betaines and amine oxides with increased viscosity for use in the formulation of disinfectants. The compositions can be used in the treatment of mammalian tissue or cells with less irritation than previous disinfectants, and can be used in the treatment of damaged skin. The betaine to amine oxide components are present in a ratio of 1:5 to 5:1, preferably 1:3 to 3:1, and more preferably 1:1. Examples of betaines include coco-N-betaine, cetyl-N-betaine, and steryl-N-betaine. Examples of amine oxides include decyl-N,N-dimethylamine oxide (equivalent to the dimethyldecylamineoxide of claim 1), myristamine oxide, oleyl-N,N-dimethylamine oxide, cetyl-N,N-dimethylamine oxide, lauryl-N,N-dimethylamine oxide, and steryl-N,N-dimethylamine oxide anticipating the "...method of inactivating a viral or microbial agent in a biological source material with a solution comprising the step of contacting the biological source material with a solution comprising an effective amount of an active ingredient, wherein the active ingredient is selected from the group consisting of: dimethyldecylamine, dimethyltridecylamine, dimethylundecylamine, dimethyldidecylamine, dimethyltetradecylamine, dimethylhexadecylamine, dimethyldecylamineoxide, dimethylundecylamineoxide, dimethyldidecylamineoxide and dimethyltridecylamineoxide" of claim 10.

Michaels teaches, in col. 10 lines 20-60, zone of inhibition tests against bacteria *S. sanguis* M5 performed using a composition comprising 0.5% of C31G (a 1:1 betaine to amine oxide composition), 5% glycerin ( equivalent to glycerol) and purified water anticipating the "...method...wherein the solution further comprises glycerol" of claim 11,

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the "...method...wherein the active ingredient comprises between 0.001 to 10 percent of the solution" of claim 12, the "...method...wherein glycerol comprises between 0.6 to 6 percent of the solution" of claims 13 and 14, the "...method...wherein the agent is a member of the group consisting of: bacteria, yeast, fungi, mycoplasma..." of claim 15. The demonstration of effective zones of inhibition of the disinfectant compositions inherently anticipates the "...method...further comprising lysing the source material" of claim 16.

The examiner respectfully points out the following: "Products of identical chemical composition can not have mutually exclusive properties. " A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonard M Williams whose telephone number is 571-272-0685. The examiner can normally be reached on MF 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LMW



SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER